

Introduced by Senator Liu

February 23, 2012

An act to amend Section 1530.5 of the Health and Safety Code, and to amend Sections 4094 and 18987.62 of the Welfare and Institutions Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

SB 1319, as introduced, Liu. Child welfare.

Existing law, the California Community Care Facilities Act, provides for the licensure and regulation by the State Department of Social Services of community care facilities, as defined, including foster family agencies that certify foster family homes and licensed foster family homes. Existing law requires the department, in establishing regulations for foster family homes and certified family homes of foster family agencies, to consider these homes as private residences, and to establish regulations for these foster family homes and certified family homes of foster family agencies as a separate regulation package from regulations for all other community care facilities. Under existing law, certified family homes are not subject to civil penalties under the act, and licensed foster family homes are only subject to specified civil penalties.

This bill would provide instead that licensed foster family homes, as well as certified family homes of foster family agencies, are not subject to civil penalties under the California Community Care Facilities Act.

Existing law requires the State Department of Mental Health to establish, by regulation, specified program standards for any facility licensed as a community treatment facility. Existing law establishes, until January 1, 2013, certain standards with respect to the required nursing staff at a community treatment facility that admits children who

have been assessed not to require medical services that require 24-hour nursing coverage.

This bill would delete the January 1, 2013, expiration date applicable to the nursing staff requirements described above, thus making those staffing requirements permanent.

Under existing law, each county may enter into performance agreements with nonprofit agencies to encourage innovation in the delivery of children's services, to develop services not available in the community, and to promote change in the child welfare services system. Existing law authorizes the State Department of Social Services to waive otherwise applicable regulations relating to foster care payments and the operation of group homes for a period of up to 3 years, in order to facilitate these performance agreements. Existing law authorizes the department to extend the regulation waivers for up to 3 additional years.

This bill would revise the waiver extension conditions applicable when the department has approved a waiver extension prior to January 1, 2011, to allow the department to continue the waiver extension until certain ratesetting reforms are adopted.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1530.5 of the Health and Safety Code is
2 amended to read:
3 1530.5. (a) The department, in establishing regulations,
4 including provisions for periodic inspections, under this chapter
5 for foster family homes and certified family homes of foster family
6 agencies, shall consider these homes as private residences, and
7 shall establish regulations for these foster family homes and
8 certified family homes of foster family agencies as an entirely
9 separate regulation package from regulations for all other
10 community care facilities. Certified family homes of foster family
11 agencies *and foster family homes* shall not be subject to civil
12 penalties pursuant to this chapter. ~~Foster family homes shall not~~
13 ~~be subject to civil penalties pursuant to Section 1548, except for~~
14 ~~violations of a serious nature described in subdivision (b) of that~~
15 ~~section. Foster family homes also shall be subject to civil penalties~~
16 ~~pursuant to Sections 1522 and 1547.~~ The department, in adopting
17 and amending regulations for these foster family homes and

1 certified family homes of foster family agencies, shall consult with
2 foster parent and foster family agency organizations in order to
3 ensure compliance with the requirement of this section.

4 (b) This section shall not apply to small family homes or foster
5 family agencies as defined in Section 1502.

6 SEC. 2. Section 4094 of the Welfare and Institutions Code is
7 amended to read:

8 4094. (a) The State Department of Mental Health shall
9 establish, by regulations adopted at the earliest possible date, but
10 no later than December 31, 1994, program standards for any facility
11 licensed as a community treatment facility. This section shall apply
12 only to community treatment facilities described in this subdivision.

13 (b) A certification of compliance issued by the State Department
14 of Mental Health shall be a condition of licensure for the
15 community treatment facility by the State Department of Social
16 Services. The department may, upon the request of a county,
17 delegate the certification and supervision of a community treatment
18 facility to the county department of mental health.

19 (c) The State Department of Mental Health shall adopt
20 regulations to include, but not be limited to, the following:

21 (1) Procedures by which the Director of Mental Health shall
22 certify that a facility requesting licensure as a community treatment
23 facility pursuant to Chapter 3 (commencing with Section 1500) of
24 Division 2 of the Health and Safety Code is in compliance with
25 program standards established pursuant to this section.

26 (2) Procedures by which the Director of Mental Health shall
27 deny a certification to a facility or decertify a facility that is
28 licensed as a community treatment facility pursuant to Chapter 3
29 (commencing with Section 1500) of Division 2 of the Health and
30 Safety Code, but no longer complying with program standards
31 established pursuant to this section, in accordance with Chapter 5
32 (commencing with Section 11500) of Part 1 of Division 3 of Title
33 2 of the Government Code.

34 (3) Provisions for site visits by the State Department of Mental
35 Health for the purpose of reviewing a facility's compliance with
36 program standards established pursuant to this section.

37 (4) Provisions for the community care licensing staff of the
38 State Department of Social Services to report to the State
39 Department of Mental Health when there is reasonable cause to

1 believe that a community treatment facility is not in compliance
2 with program standards established pursuant to this section.

3 (5) Provisions for the State Department of Mental Health to
4 provide consultation and documentation to the State Department
5 of Social Services in any administrative proceeding regarding
6 denial, suspension, or revocation of a community treatment facility
7 license.

8 (d) The standards adopted by regulations pursuant to subdivision
9 (a) shall include, but not be limited to, standards for treatment,
10 staffing, and for the use of psychotropic medication, discipline,
11 and restraints in the facilities. The standards shall also meet the
12 requirements of Section 4094.5.

13 ~~(e) (1) Until January 1, 2013, all of the following are applicable:~~
14 ~~(A)~~

15 (e) (1) A community treatment facility shall not be required by
16 the State Department of Mental Health to have 24-hour onsite
17 licensed nursing staff, but shall retain at least one full-time, or
18 full-time-equivalent, registered nurse onsite if both of the following
19 are applicable:

20 (i)
21 (A) The facility does not use mechanical restraint.

22 (ii)
23 (B) The facility only admits children who have been assessed,
24 at the point of admission, by a licensed primary care provider and
25 a licensed psychiatrist, who have concluded, with respect to each
26 child, that the child does not require medical services that require
27 24-hour nursing coverage. For purposes of this section, a “primary
28 care provider” includes a person defined in Section 14254, or a
29 nurse practitioner who has the responsibility for providing initial
30 and primary care to patients, for maintaining the continuity of care,
31 and for initiating referral for specialist care.

32 ~~(B)~~
33 (2) Other medical or nursing staff shall be available on call to
34 provide appropriate services, when necessary, within one hour.

35 ~~(C)~~
36 (3) All direct care staff shall be trained in first aid and
37 cardiopulmonary resuscitation, and in emergency intervention
38 techniques and methods approved by the Community Care
39 Licensing Division of the State Department of Social Services.

40 ~~(2)~~

1 (4) The State Department of Mental Health may adopt
2 emergency regulations as necessary to implement this subdivision.
3 The adoption of these regulations shall be deemed to be an
4 emergency and necessary for the immediate preservation of the
5 public peace, health and safety, and general welfare. The
6 regulations shall be exempt from review by the Office of
7 Administrative Law and shall become effective immediately upon
8 filing with the Secretary of State. The regulations shall not remain
9 in effect more than 180 days unless the adopting agency complies
10 with all the provisions of Chapter 3.5 (commencing with Section
11 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
12 as required by subdivision (e) of Section 11346.1 of the
13 Government Code.

14 (f) During the initial public comment period for the adoption
15 of the regulations required by this section, the community care
16 facility licensing regulations proposed by the State Department of
17 Social Services and the program standards proposed by the State
18 Department of Mental Health shall be presented simultaneously.

19 (g) A minor shall be admitted to a community treatment facility
20 only if the requirements of Section 4094.5 and either of the
21 following conditions are met:

22 (1) The minor is within the jurisdiction of the juvenile court,
23 and has made voluntary application for mental health services
24 pursuant to Section 6552.

25 (2) Informed consent is given by a parent, guardian, conservator,
26 or other person having custody of the minor.

27 (h) Any minor admitted to a community treatment facility shall
28 have the same due process rights afforded to a minor who may be
29 admitted to a state hospital, pursuant to the holding in *In re Roger*
30 *S.* (1977) 19 Cal.3d 921. Minors who are wards or dependents of
31 the court and to whom this subdivision applies shall be afforded
32 due process in accordance with Section 6552 and related case law,
33 including *In re Michael E.* (1975) 15 Cal.3d 183. Regulations
34 adopted pursuant to Section 4094 shall specify the procedures for
35 ensuring these rights, including provisions for notification of rights
36 and the time and place of hearings.

37 (i) Notwithstanding Section 13340 of the Government Code,
38 the sum of forty-five thousand dollars (\$45,000) is hereby
39 appropriated annually from the General Fund to the State

1 Department of Mental Health for one personnel year to carry out
2 the provisions of this section.

3 SEC. 3. Section 18987.62 of the Welfare and Institutions Code
4 is amended to read:

5 18987.62. (a) Upon request from a county, the director may
6 waive regulations governing foster care payments or the operation
7 of group homes to enable counties to implement the agreements
8 established pursuant to Section 18987.61. Waivers granted by the
9 director shall be applicable only to services provided under the
10 terms of the agreement and for the duration of the agreement,
11 whichever is earlier, unless the director authorizes an extension
12 of the waiver pursuant to subdivision (f). A waiver shall only be
13 granted when all of the following apply:

14 (1) The agreement promises to offer a worthwhile test of an
15 innovative approach or to encourage the development of a new
16 service for which there is a recognized need.

17 (2) The regulatory requirement prevents the implementation of
18 the agreement.

19 (3) The requesting county proposes to monitor the agreement
20 through performance measures that ensure that the purposes of the
21 waived regulation will be achieved.

22 (b) The director shall take steps that are necessary to prevent
23 the loss of any substantial amounts of federal funds as a result of
24 the waivers granted under this section. The waiver may specify
25 the extent to which the requesting county shall share in any cost
26 resulting from any loss of federal funding.

27 (c) The director shall not waive regulations that apply to the
28 health and safety of children served by participating private
29 nonprofit agencies.

30 (d) The director shall notify the appropriate policy and fiscal
31 committees of the Legislature whenever waivers are granted and
32 when a waiver of regulations was required for the implementation
33 of the county's proposed agreement. The director shall identify
34 the reason why the development of the services outlined by the
35 agreement between the county and the service provider are hindered
36 by the regulations to be waived.

37 (e) The county or private nonprofit agency shall fund an
38 independent evaluation of the waiver as described in subdivision
39 (f) of Section 18987.61.

1 (f) The director may grant a county's request to extend the
2 waiver for up to an additional three years based upon a review and
3 analysis of all of the following information:

4 (1) The results of the report, if required under subdivision (e)
5 of Section 18987.61.

6 (2) The results of the independent evaluation of the waiver
7 pursuant to subdivision (e) of this section.

8 (3) Justification for the extension, and verification of continued
9 compliance with this section.

10 (g) (1) For any waiver approved on or before January 1, 2010,
11 an extension of the waiver for up to an additional three years may
12 be based upon the department's review and analysis of the
13 information required to be submitted in subdivision (f).

14 (2) If an independent evaluation has not yet been completed,
15 the department may grant an extension based upon its review of
16 available information. However, an independent evaluation shall
17 be required to be completed within one year prior to the end of the
18 waiver.

19 (h) (1) *If the department has approved a waiver extension under*
20 *this section before January 1, 2011, and if the department has*
21 *determined, based on the criteria contained in subdivision (f), that*
22 *the waiver should be extended in order to sustain the positive*
23 *outcomes demonstrated as a result of the waiver, the department*
24 *may extend the waiver.*

25 (2) *A waiver extended pursuant to this subdivision shall continue*
26 *until it is no longer necessary, because rate setting reforms have*
27 *been adopted that provide adequate support for the programs*
28 *developed pursuant to this article.*